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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

SUDECIA MARTINEZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FISHER & PAYKEL APPLIANCES, INC., a
California corporation; FISHER & PAYKEL
APPLIANCES USA HOLDINGS INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 30-2020-01153471-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

**(1) VIOLATION OF LABOR CODE §
2698 ET SEQ (PRIVATE
ATTORNEY GENERAL ACT)**

Assigned for all purposes to: Judge William Claster

Dept: Cx104

Plaintiff SUDECIA MARTINEZ (“Martinez” or “Plaintiff”) hereby submits this
Complaint against Defendants FISHER & PAYKEL APPLIANCES, INC., a California
corporation; FISHER & PAYKEL APPLIANCES USA HOLDINGS INC., and DOES 1-50
(hereinafter collectively referred to as “Defendants”), on behalf of the State of California for
penalties and/or damages for violations of the California Labor Code, including without

1 limitation, failure to pay all employees their earned wages in a timely manner as follows:

2 **INTRODUCTION**

3 1. This action is within the Court’s jurisdiction under California Labor Code
4 section 2698 *et seq.*, the Private Attorneys General Act (“PAGA”).

5 2. This complaint challenges systemic illegal employment practices resulting in
6 violations of the California Labor Code against employees of Defendants.

7 3. Plaintiff is informed and believes, and based thereon alleges, Defendants, jointly
8 and severally, have acted intentionally and with deliberate indifference and conscious
9 disregard to the rights of all employees by failing to pay all employees their earned wages in a
10 timely manner.

11 4. Plaintiff is informed and believes, and based thereon alleges, Defendants have
12 engaged in, among other things a system of willful violations of the California Labor Code and
13 applicable IWC wage orders by creating and maintaining policies, practices and customs that
14 knowingly deny employees the above stated rights and benefits.

15 **JURISDICTION AND VENUE**

16 5. The Court has jurisdiction over the violations of the PAGA.

17 6. Venue is proper because the Defendants do business in Orange County, and
18 Plaintiff performed her work in Costa Mesa, California.

19 **PARTIES**

20 7. Plaintiff began employment with Defendants in about September 2019, as a Job
21 Management Team member.

22 8. Plaintiff was and is the victim of the policies, practices, and customs of
23 Defendants complained of in this action in ways that have deprived her of the rights
24 guaranteed to her by California Labor Code section 204 and PAGA.

25 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
26 herein mentioned Defendant Fisher & Paykel Appliances, Inc. and Defendant Fisher & Paykel
27 Appliances USA Holdings Inc. was and are corporations under the laws of the State of
28 California, and doing business in the State of California.

1 10. As such, and based upon all the facts and circumstances incident to Defendants'
2 business, Defendants are subject to California Labor Code section 204.

3 11. Plaintiff does not know the true names or capacities, whether individual, partner
4 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
5 said defendants are sued under such fictitious names. If and when they are ascertained,
6 Plaintiff prays for leave to amend this Complaint. Plaintiff is informed and believes and, based
7 thereon alleges, that each of said fictitious Defendants was responsible in some way for the
8 matters alleged herein and proximately caused Plaintiff and members of the class to be subject
9 to the illegal employment practices, wrongs, and injuries complained of herein.

10 12. At all times herein mentioned, each of said Defendants participated in the doing
11 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
12 the Defendants, and each of them, were the agents, servants and employees of each of the other
13 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
14 acting within the course and scope of said agency and employment.

15 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 material hereto, each of the Defendants named herein was the agent, employee, alter ego
17 and/or joint venturer of, or working in concert with each of the other co-Defendants and was
18 acting within the course and scope of such agency, employment, joint venture, or concerted
19 activity. To the extent said acts, conduct, and omissions were perpetrated by certain
20 Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and
21 omissions of the acting Defendants.

22 14. At all times herein mentioned, Defendants, and each of them, were members of,
23 and engaged in, a joint venture, partnership and common enterprise, and acting within the
24 course and scope of, and in pursuance of, said joint venture, partnership and common
25 enterprise.

26 15. At all times herein mentioned, the acts and omissions of various Defendants, and
27 each of them, concurred and contributed to the various acts and omissions of each and all of
28 the other Defendants in proximately causing the injuries and damages as herein alleged. At all

1 times herein mentioned, Defendants, and each of them, ratified each and every act or omission
2 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all of the other Defendants in proximately
4 causing the damages as herein alleged.

5 **PAGA ALLEGATIONS**

6 16. **Definition:** The named individual Plaintiff seeks penalties pursuant to PAGA on
7 behalf of the following aggrieved employees (which shall be collectively referred to as the
8 “Aggrieved Employees”):

- 9 a. All current and former employees of Defendants in the State of California
10 who were paid wages by Defendants at any time from June 3, 2019, to
11 the present.

12 17. Defendants uniformly administered a corporate policy, practice of failing to
13 timely pay wages to its employees in violation of Labor Code § 204.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

16 18. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 19. Defendants failed in their affirmative obligation to timely pay wages to their
19 employees. Defendants, as a matter of policy and practice, paid their employees on a bi-
20 weekly basis and thus are subject to the timing requirements of Labor Code § 204(d).

21 20. Pursuant to Labor Code section 204(d), all earned wages by such employees
22 must be paid out by the seventh (7th) day following the closing of the pay period. As a pattern
23 and practice, Defendants had an inconsistent policy of paying the wages of its employees on
24 the thirteenth (13th) day or beyond following the close of the respective pay period, and thus,
25 beyond the time periods as allowed pursuant to Labor Code section 204.

26 21. Plaintiff provided written notice to the California Labor & Workforce
27 Development Agency (“LWDA”) of Defendants’ violation of California Labor Code section
28 204 pursuant to PAGA on June 3, 2020. To date, the LWDA has not provided written notice

1 as to whether the LWDA intends to investigate Plaintiff's said allegations. As such, Plaintiff
2 has therefore complied with all notice and exhaustion requirements pursuant to PAGA.

3 22. Pursuant to Labor Code section 2699(a), the Plaintiff seeks recovery of all
4 applicable civil penalties, for herself and on behalf of all Aggrieved Employees, for
5 Defendants' violation of Labor Code section 204.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
8 this suit is brought against DEFENDANTS, jointly and severally, as follows:

9 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
10 Labor Code section 2698 *et seq.*;

11 2. On all causes of action, for attorney's fees and costs as provided by California
12 Labor Code section 2698 *et seq.* and Code of Civil Procedure section 1021.5; and

13 3. For such other and further relief as the Court may deem just and proper.
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15 DATED: July 31, 2020

DIVERSITY LAW GROUP, P.C.

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17 By: 
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19 Max W. Gavron
20 Attorneys for Plaintiff Sudecia Martinez
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